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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 KENNETH R. ARONSON,

12 Petitioner,

13 v.

14 STATE OF WASHINGTON,

15 Respondent.

CASE NO. 19-cv-5463

ORDER DECLINING TO ADOPT
REPORT AND
RECOMMENDATION

16 THIS MATTER comes before the Court on the Report and Recommendation of
17 Magistrate Judge J. Richard Creatura. Dkt. 10. The Court is familiar with the Report and
18 Recommendation and the remainder of the record herein. For the reasons set forth below, the
19 Court declines to adopt the Report and Recommendation.

20 **BACKGROUND**

21 On May 21, 2019, Petitioner filed his proposed petition with the United States District
22 Court in the Eastern District of Washington. Dkt. 1. The Clerk of Court for the Eastern District
23 of Washington informed Petitioner that the court needed to receive an Application to Proceed
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1 without Prepayment of Fees and Affidavit with a Certificate or, in the alternative, receive a \$5.00
2 filing fee. Dkt. 2.

3 On May 23, 2019, the case was transferred to the Western District of Washington. Dkt. 3.
4 On May 24, 2019, the Clerk's Office instructed Petitioner to pay the filing fee or file the proper
5 IFP form and provided petitioner with the correct form. Dkts. 5; and 5-1. On June 3, 2019, the
6 Clerk's Office again instructed Petitioner to pay the filing fee or file the proper IFP form by July
7 3, 2019, and it provided Petitioner with the correct form. Dkt. 8. On July 23, 2019, the Court
8 ordered Petitioner to submit the proper IFP form or pay the filing fee by August 23, 2019. Dkt. 9.
9 The Court advised petitioner that if he failed to comply with the Court's Order, the Court would
10 recommend that the case be dismissed. Dkt. 9.

11 The instant Report and Recommendation, dated September 10, 2019, states that
12 "Petitioner has failed to pay the filing fee or submit the proper IFP form." Dkt. 10, at 2. The
13 Report and Recommendation recommends that Petitioner's action be dismissed without
14 prejudice for not complying with the court's order to submit the proper IFP form or to pay the
15 filing fee by August 23, 2019. Dkt. 10.

16 Petitioner paid the \$5.00 filing fee on June 17, 2019, in the Eastern District of
17 Washington, but it was not entered in this district until September 17, 2019. Dkt. 11.

18 **DISCUSSION**

19 Federal Rule of Civil Procedure 41(b) provides for involuntary dismissal if a petitioner
20 fails to prosecute or to comply with a court order. The dismissal counts as an adjudication on the
21 merits unless the Court provides otherwise. Petitioner's \$5.00 filing fee, paid on June 17, 2019,
22 was not entered until September 17, 2019, and its payment is not reflected in the instant Report
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1 and Recommendation, dated September 10, 2019. Therefore, the Court declines to adopt the
2 Report and Recommendation.

3 **ORDER**

4 Therefore, it is hereby **ORDERED:**

- 5 • The Court declines to adopt the Report and Recommendation (Dkt. 10); and
6 • The case remains referred to Magistrate Judge J. Richard Creatura.

7 IT IS SO ORDERED.

8 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
9 to any party appearing *pro se* at said party's last known address.

10 Dated this 17th day of September, 2019.

11 

12 ROBERT J. BRYAN
13 United States District Judge